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DEPARTMENT OF AGRICULTURE

Office of the Secretary of Agriculture

7 CFR Part 1

Rules of Practice and Procedure Governing Formal Rulemaking Proceedings Instituted by the Secretary

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA or Department) is amending the regulations on the rules of practice and procedure governing formal rulemaking proceedings instituted by the Secretary. This final rule amends the definition of judge so that the term is consistently applied to all USDA formal rulemaking proceedings.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Rupa Chilukuri, Trial Attorney, Office of the General Counsel, telephone: 202–720–4982, email: *Rupa.Chilukuri@usda.gov*.

SUPPLEMENTARY INFORMATION: USDA is issuing this final rule to amend the definition of judge in the rules of practice and procedure governing formal rulemaking proceedings instituted by the Secretary. The current definition of judge in the rules of practice at 7 CFR 1.802 only includes administrative law judges. To provide the agency with more flexibility in overseeing formal rulemaking proceedings, and to better allocate resources within the Department, we are expanding the definition of judge to be consistent with how that term is defined in the Department’s other rules of practice and procedure applicable to formal rulemaking proceedings (i.e., 7 CFR part 900 (General Regulations) and 7 CFR part 1200 (Rules

of Practice and Procedure Governing Proceedings Under Research, Promotion, and Information Programs)). Judge will now be defined as any administrative law judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

5 U.S.C. 553, 601, and 804

This final rule modifies a definition in agency rules of practice and procedure. Under the Administrative Procedure Act, prior notice and opportunity for comment are not required for the promulgation of agency rules of practice and procedure. 5 U.S.C. 553(b)(3)(A). Only substantive rules require publication 30 days prior to their effective date. 5 U.S.C. 553(d). Therefore, this final rule is effective upon publication in the Federal Register.

Furthermore, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. In addition, because prior notice and opportunity for comment are not required to be provided for this final rule, this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Executive Orders 12866 and 13563

This rule does not meet the definition of a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563. Because this rule is not a significant regulatory action, it has not been reviewed by the Office of Management and Budget.

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13771

Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements of Executive Order 13771. *See* OMB's Memorandum on "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings that must be exhausted before parties may file suit in court challenging this rule.

Executive Order 13132

This rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. The review reveals that this rule does not contain policies with federalism implications sufficient to warrant federalism consultation under Executive Order 13132.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on tribal governments and would not have significant tribal implications.

Paperwork Reduction Act

This rule contains no information collections or recordkeeping requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 et seq.].

List of Subjects in 7 CFR Part 1

Administrative practice and procedure.

For the reasons set forth in the preamble, 7 CFR part 1 is amended as follows:

PART 1 – ADMINISTRATIVE REGULATIONS

Subpart P - Rules of Practice and Procedure Governing Formal Rulemaking Proceedings Instituted by the Secretary

1. Add an authority citation for subpart P of part 1 to read as follows:

Authority: 5 U.S.C. 301.

2. Section 1.802 is amended by revising the definition of “Judge” to read as follows:

§1.802 Definitions.

Judge means any administrative law Judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

Stephen Alexander Vaden,
General Counsel,
Office of the General Counsel.
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